Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID CHRIN,

Petitioner

v.

IBRIX, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR WRIT OF CERTIORARI

DAVID CHRIN
CALLE 63 #23-53 APT. 605
MANIZALES, CALDAS
COLOMBIA

TELEPHONE: 011-57-6-890-2862

Petitioner, pro-se

QUESTION FOR REVIEW

1. In a diversity action involving the ownership of an *undivided one-third* interest in a patent, when the action is removed from state court and *no* evidence of the value of the undivided one-third interest is presented by the removing party, does this Court have jurisdiction under U.S.C. § 1332(a)?

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The Valuation of Patents: A review of patent valuation methods with consideration of option based methods and the potential for further research, Robert Pitkethly (1997), Published by United Nations Economic Commission for Europe in a collection titled: *Intellectual Assets: Valuation and Capitalization* (2003) (p. 42)

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Valuing Patents and Patent Portfolios from a Corporate Perspective – Theoretical Considerations, Applied Needs, and Future Challenges, Markus Reitzig (2003), Published by United Nations Economic Commission for Europe in a collection titled: *Intellectual Assets: Valuation and Capitalization* (2003) (p. 66)

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

U.S. Court of Appeals for the Third District, *Opinion,* Filed on August 15, 2008, Not Precedential. Petitioner's Appendix ("Pet. App.") 1.

U.S. District Court, District of New Jersey, *Order,* Entered on July 20, 2007. Denied a motion to amend the complaint. Not relevant to this petition. Not included in Pet. App.

U.S. District Court, District of New Jersey, *Opinion and Order,* entered on May 29, 2007, Not for Publication. Denied a motion to amend the complaint and a motion to vacate dismissal on other procedural grounds. Not relevant to this petition. Not included in Pet. App.

U.S. District Court, District of New Jersey, *Memorandum and Order,* Entered March 21, 2007, Not for Publication. Pet. App. 13.

JURISDICTION

Pursuant to Supreme Court Rule 14.1(e):

i. The U.S. Court of Appeals for the Third Circuit entered the judgment in this case on August 15, 2008.

ii. A timely petition for rehearing was denied by the United States Court of Appeals for the Third Circuit on February 4, 2009. A copy of the order denying rehearing appears at Pet. App. 23.

iii. Rule 12.5 is not applicable to this petition.

iv. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

v. Rule 29.4(b) or (c) notifications are not applicable to this petition.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1332 states in pertinent part:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States; "

28 U.S.C. § 1332 in its entirety is at Pet. App. 25.

28 U.S.C. § 1254 confers jurisdiction on the Supreme Court from a court of appeals. Pet. App. 25.

28 U.S.C. § 1441 permits actions to be removed from state courts to district courts. Pet. App. 34.

28 U.S.C. § 1446 describes the procedure for removing actions. Pet. App. 38.

35 U.S.C. § 262 permits joint owners of patents to use a patent and dispose of their interest in the patent without accounting to the other owners. Pet. App. 42.

STATEMENT OF THE CASE

A. DISTRICT COURT

This case was originally filed in the Superior Court of New Jersey, Somerset County by the Petitioner/Plaintiff, David Chrin (herein "Chrin") against Ibrix, Inc. (Respondent/Defendant, herein "Ibrix") on October 31, 2006.

The case involves a contract dispute over the assignment and ownership of Chrin's *undivided one-third* interest in patent number 6,782,389 in which Chrin is one of three co-inventors. In equity, Chrin sought the return of his property.

Ibrix timely filed a notice of removal to the U.S. District Court, District of New Jersey (Trenton)

claiming jurisdiction under 28 U.S.C. §§ 1332, 1441, and 1446.

In the notice of removal, Ibrix did not include any evidence as to the value of the undivided one-third interest, but did state the value of this controversy is the value of Chrin's interest in the patent.

Chrin moved to remand based on Ibrix failing to provide proof the value of the controversy exceeds the threshold amount of $75,000 as required by 28 U.S.C. § 1332(a).

Ibrix subsequently submitted an affidavit by Steven Orszag, a director of Ibrix and also a co-inventor (herein "Orszag"). In the affidavit:

1. Orszag stated a range of values for only the *entire* patent.

2. Orszag did not state a value for Chrin's undivided one-third patent interest that is the subject of the controversy here.

In reply to this affidavit, Chrin argued to the District Court:

1. No evidence of the value of the controversy was presented by Ibrix because Orszag valued only the entire patent and not the undivided one-third patent interest, therefore Ibrix has not proven the value of

the controversy.

2. It is impossible to draw any conclusion as to what the value of an undivided one-third patent interest is from valuing the whole patent. The value of a patent is inherently related to the monopoly value the patent gives in rights to exclusively sell the thing protected by the patent.[1] Under 35 U.S.C. § 262, when there is more than one inventor, each inventor has equal, undivided rights to the patent. The consequence of which is, if the inventors do not agree to cooperate and try to independently sell the thing protected by the patent, no exclusivity or monopoly to sell the thing can exist. Therefore, the value of an undivided one-third patent interest would be substantially different than the value of a patent as a whole.

The District Court denied the motion to remand in its *Memorandum and Order* entered on March 21, 2007 (Pet. App. 13) in which the case was also dismissed based on Ibrix's motion to dismiss for failure to state a claim.

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1 *Evaluation of Intellectual Property and Intangible Assets*, A. N. Kozyrev (2003); *The Valuation of Patents: A review of patent valuation methods with consideration of option based methods and the potential for further research*, Robert Pitkethly (1997); *Valuing Patents and Patent Portfolios from a Corporate Perspective – Theoretical Considerations, Applied Needs, and Future Challenges*, Markus Reitzig (2003)

In disposing of the motion to remand and thus conferring jurisdiction in this case with the District Court, it wrote a short paragraph in foot note 1 at Pet. App. 15-16, and not in the main discussion of the case.

Though the District Court does not expressly state what the object of the controversy is, in reading the opinion at footnote 1, it is clear the District Court concludes the object of the controversy is the entire patent, because the District Court never uses the words "undivided interest" or "undivided one-third interest", but only "patent".

The District Court unequivocally misstates the object of controversy as the entire patent when it is in fact an undivided one-third interest, and so incorrectly concludes the threshold value has been met based on Orszag's affidavit.

B. COURT OF APPEALS

Chrin timely filed a notice of appeal of the District Court's March 21, 2007 *Memorandum and Order*.[2]

Chrin's briefing here substantially repeated the

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2 There were other filings and procedures both prior to and after the notice of appeal to for leave to amend the complaint and vacate the dismissal. They are not relevant to the issues raised in this petition.

arguments from the two points made in reply to Orszag's affidavit and stated above in part A.

Except, point two was expanded on. Chrin argued at first blush since the value of a patent is inherently related to the monopoly value it creates, and if that monopoly is broken by multiple co-inventors competing against each other, then the value of an undivided patent interest would be zero because there is no monopoly.

But, after further consideration of the scholarly authorities, Chrin suggested that the value of an undivided patent interest could be related to the value of royalty payments when a patent is licensed to multiple other parties.

On August 15, 2008, the U.S. Court of Appeals for the Third Circuit entered an *Opinion* and judgment affirming the District Court's *Memorandum* of March 21, 2007. As to the relevant question raised in this petition, the Court of Appeals' opinion did not substantially expand on the District Court's *Memorandum* and the language was very similar to the District Court's opinion. The Court of Appeals *Opinion* is in Pet. App. 1.

Just like the District Court, the Court of Appeals did not expressly state what the object of the

controversy is. But the words used clearly indicate the Court of Appeals also incorrectly believes the amount of the controversy is to be based on the value of the entire patent and not on the undivided one-third patent interest.

Chrin timely filed a petition for a panel rehearing, calling this error to the attention of the Court of Appeals.[3]

The petition for rehearing was denied and entered on February 4, 2009.

This petition for writ of certiorari is timely filed on the 90th day from February 4, 2009, by posting on May 5, 2009 under Supreme Court Rules 13.3 and 29.2.

REASONS FOR GRANTING THE WRIT

In *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83 (1998), this Court at 94-95 wrote "The requirement that jurisdiction be established as a threshold matter . . . is 'inflexible and without exception,'" (quoting *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 382 (1884)); for "[j]urisdiction is power to declare the law," and "'[w]ithout jurisdiction

3 A second error was also argued, but is not relevant to this petition.

the court cannot proceed at all in any cause,'" (quoting *Ex parte McCardle,* 7 Wall. 506, 514 (1869)). When jurisdiction is challenged, extreme diligence is required because a court must examine its own limitations of authority.

In this diversity case, the District Court asserted its jurisdiction based on the conclusion that Orszag's affidavit, which valued the entire patent, proved by a preponderance of the evidence the amount in controversy exceeded the $75,000 threshold. *Samuel-Bassett v. KIA Am., Inc.,* 357 F.3d 392 (3d Cir. 2004) at 397.

However, as noted to the District Court once, and twice to the Court of Appeals, the object of the controversy is not the entire patent, but only an undivided one-third interest.

No evidence is no evidence. Ibrix failed to provide any evidence to the District Court as to the value of the undivided one-third interest in the patent. From the facts presented in Orszag's affidavit, it is impossible to conclude what the value of the undivided one-third interest is, given that the monopoly would be broken.

This is not a simple erroneous finding of fact. It goes to the very heart of whether or not this Court

has jurisdiction. For the District Court to incorrectly conclude the evidence proves the value of the controversy is simple error. For the Court of Appeals to sanction and approve the finding, so far deviates from accepted judicial practice and standards of review to be an abuse of discretion, so that this Court must step in and assert its supervisory authority.

CONCLUSION

For the reasons as stated above, the petitioner respectfully requests this writ for certiorari be granted.

Respectfully submitted,

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Petitioner, pro-se

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 07-2931 & 07-3466

DAVID CHRIN,

Appellant

v.

IBRIX, INC.

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 06-cv-06226)
District Judge: Honorable Anne E. Thompson

Submitted Pursuant to Third Circuit LAR 34.1(a)
April 8, 2008
Before: RENDELL, JORDAN and ROTH,
Circuit Judges

(Opinion filed: August 15, 2008)

OPINION

PER CURIAM

Proceeding pro se, David Chrin appeals the District Court's order denying his motion to remand to state court and dismissing his complaint pursuant to Fed. R. Civ. P. 12(b)(6). Because we write for the parties, we state only those facts most pertinent to our decision.

Chrin is a co-inventor of a method of electronic file sharing and storage. In 2000, he signed a "Confidential Information and Invention Assignment Agreement" ("CIIA") promising to assign any potential patents to Ibrix, Inc in exchange for employment with Ibrix. In 2001, he began employment with Ibrix. That same year, the parties filed a patent application for the electronic filing sharing and storage invention; they also executed an Assignment expressing Chrin's agreement to assign his entire interest in the patent to Ibrix, in exchange for one dollar and "other good and valuable consideration." Before the Patent and Trademark Office granted the patent, Ibrix terminated Chrin's employment. Subsequently, in 2003, Chrin filed a lawsuit against Ibrix and other defendants in the Delaware Court of Chancery, which was rejected in part. See Chrin v. Ibrix. Inc., No Civ. A. 20587, 2005 WL 28 10599 (De1. Ch. Oct 19, 2005).

In 2006, Chrin filed the instant complaint in the Superior Court of New Jersey against Ibrix, Inc., seeking a declaratory judgment that the CIIA and the Assignment were null and void, or, in the alternative, for a monetary award reflecting his interest in the patent. On diversity jurisdiction grounds, Ibrix removed the action to the District Court pursuant to 28 U.S.C. §§ 1441 and 1446, and it filed a motion to dismiss under Rule 12(b)(6). Instead of filing a response to the motion to dismiss, Chrin moved to remand, arguing that Ibrix failed to establish that his claims satisfy the amount in controversy requirement for diversity jurisdiction. The District Court denied his motion and dismissed the Complaint for failing to state a claim. After an unsuccessful motion for reconsideration and two unsuccessful motions to amend his complaint, Chrin appealed.

We are presented with two questions. The first is whether the District Court properly denied Chrin's motion to remand on the ground that the requisite jurisdictional amount under 28 U.S.C. § 1332(a) had not been satisfied. The second is whether the District Court properly dismissed Chrin's complaint pursuant to Rule 12(b)(6) without granting his motions to amend his complaint.

We have jurisdiction over this appeal pursuant

to 28 U.S.C. § 1291. Our review of jurisdictional questions is plenary. See Samuel-Bassett v. KIA Motors America, Inc., 357 F.3d 392, 396 (3d Cir. 2004). Moreover, we exercise plenary review over a dismissal pursuant to Rule 12(b)(6), and we review a denial of a motion to amend for abuse of discretion. See Krantz v. Prudential Inv. Fund Mgmt. LLC, 305 F.3d 140, 143-44 (3d Cir. 2002).

I.

We must first decide whether the amount in controversy in this case exceeds $75,000. The removing party bears the burden of showing that the case is properly before the federal court. Samuel-Bassett, 357 F.3d at 396. Where the parties dispute the underlying facts concerning the jurisdictional amount requirement, the removing party must prove by a preponderance of the evidence that the amount in controversy exceeds $75,000. Frederico, 507 F.3d at 194 (quoting McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178 (1936)). Thereafter, or if the underlying jurisdictional facts are not in dispute, a federal court must decide whether it appears to a "legal certainty" that the plaintiff is not entitled to recover an amount exceeding the jurisdictional requirement. See id. (quoting St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938)).

In this case, the District Court found it "more likely than not" that the amount-in-controversy requirement had been satisfied, relying on the only evidence presented below--the Affidavit of Steven Orszag, Ibrix's founder and co-inventor of the patent at issue.[1] Although he now challenges the Affidavit on appeal, Chrin filed no opposition to Orszag's Affidavit in the District Court. Thus, in the absence of competing evidence, the District Court found the Orszag Affidavit to be competent proof, and concluded that the jurisdictional amount had been satisfied for the purposes of 28 U.S.C. § 1332(a).

On appeal, Chrin for the first time challenges Orszag as unqualified to appraise the value of patents, and he asserts that Orszag's valuation methods of the patent in this case are conclusory and flawed. Notwithstanding his critique of the Orszag Affidavit, Chrin puts forth no opposing facts to suggest that the contested amount falls short of the jurisdictional requirement. He describes at length a number of alternative valuation methods in his submissions on appeal, but he nevertheless supplies no useful information to calculate what the amount in controversy might be under those methods.

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1 In his Affidavit, Orszag estimates that the patent is worth between $300,000 and one million dollars.

Therefore, even assuming arguendo that Orszag's valuation methods are flawed, Chrin's submissions on appeal give us no reason to disagree with the District Court's finding that Ibrix has carried its burden of proving that the jurisdictional amount has more likely than not been satisfied. Because Chrin did not contest the affidavit before the District Court, we apply the "legal certainty test" to the facts presented, and, having do so, conclude that it does not appear to a legal certainty that Chrin cannot recover more than $75,000.Because we are satisfied that the requisite jurisdictional amount has been met, we may reach the merits.

II.

Our next task is to determine whether the District Court properly dismissed Chrin's complaint under Rule 12(b)(6) and denied his motions to amend. In evaluating a motion to dismiss, courts must accept as true all the factual allegations in a complaint and draw all inferences from the alleged facts in a light most favorable to the plaintiff. Worldcom, Inc. v. Graphnet, Inc., 343 F.3d 651, 653 (3d Cir. 2003). A motion to dismiss may be granted only if, after such a review, the plaintiff is not entitled to relief. Doug Grant, Inc. v. Great Bay Casino Corp., 232 F.3d 173, 183 (3d Cir. 2000). Motions to amend may be denied

on the grounds that they are futile. Shane v. Fauver, 213 F.3d 113, 116 (3d Cir. 2000).

In his Complaint, Chrin sought a declaratory judgment providing that the CIIA and Assignment are null and void. In particular, he asserted that there was no ("meeting of the minds" regarding consideration for the CIIA, and that the consideration for the Assignment was inadequate. In the alternative, Chrin alleged that, under a theory of quantum merit, he was entitled to a monetary award in the amount of one-third of the value of the patent, because the consideration he received for transferring his ownership interest in the patent was inadequate compared with the patent's value.

After reviewing the pleadings and submissions in a light most favorable to Chrin, we conclude that his claim fails. As to the CIIA, Chrin claims that there was no "meeting of the minds as to [the] consideration to be received and no contract formed." However, as the District Court aptly points out, that claim is belied by his Complaint. Chrin explained in his Complaint that he signed an agreement promising to assign any potential patents to Ibrix in exchange for employment. After the agreement was signed, Ibrix did in fact employ Chrin full-time as a Product Manager. These facts plainly indicate that he

understood the terms of the bargained for exchange. Accordingly, his claim cannot succeed.

Chrin insists in the alternative that the contract does not obligate him to assign his invention, because he invented the product before starting employment with Ibrix. As he argues on appeal, even assuming that the contract is valid, the language of the contract only required him to hand over inventions created "during the term of [his] employment . . . ." Because he was not employed at the time that he invented the product, he argues that the contract does not require that he assign his rights, interests, and title over the invention to Ibrix.

Chrin's argument is plainly subverted by other provisions in the contract, a copy of which he attached to his Complaint. In particular, we note that section 2(a) of the CIIA memorializes Chrin's acknowledgment that he has informed Ibrix of all prior and related inventions. The provision further stipulates that all prior inventions, if they exist, should be listed in a separate attachment entitled "Exhibit A: List of Prior Inventions and Original Works of Authorship." The provision also instructs that "If there are no such Prior Inventions indicated on Exhibit A, I represent that there are no such Prior inventions." A review of "Exhibit A" indicates that

Chrin check-marked "No inventions" selection on the attachment, and he then executed it by signing and dating it. Moreover, Chrin acknowledges that he disclosed nothing on that exhibit. Because the contract plainly contradicts his argument, it cannot succeed.

Chrin argues further that the consideration for the Assignment -- one dollar and "other good and valuable consideration" -- was inadequate. However, as we have just explained, Chrin's own allegations in his complaint evidences his understanding that his employment with Ibrix was the exchange for promising Ibrix full rights to all potential patents. Under these circumstances, because the Assignment carried out the invention assignment provisions of the CIIA, which Chrin initially agreed to as a condition of his employment, his continued employment, under New Jersey law, constituted adequate consideration for the subsequent agreement. See Martindale v. Sandvik, Inc., 800 A.2d 872, 879 (N.J. 2002). Accordingly, as the District Court correctly noted, because Chrin has failed to argue that the subsequent agreement constituted a modification of the terms of CIIA, we conclude that adequate consideration supported the Assignment.

Finally, Chrin asserts that he should recover

the fair value of his portion of the patent under a theory of quantum meruit, because the consideration for his assignment of the valuable patent to Ibrix was "woefully inadequate" relative to the value of the patent. However, Chrin cannot recover under quantum meruit because the parties clearly intended to be bound under the terms of the CIIA and Assignment. See Kas Oriental Rugs, Inc v. Ellman, 926 A.2d 387, 392 (N.J. Super. 2007)(quoting Weichert Co. Realtors v. Ryan, 608 A.2d 280 (N.J. 1992). Moreover, as we have already concluded, Chrin expressly relinquished his rights to the patent under the agreements as a condition of his employment. Additionally, as the District Court noted, to the extent that Chrin's claim amounts to an argument that he received a bad bargain, we agree that we may not fashion a better bargain for Chrin than that which he negotiated for himself. See Lucier v. Williams, 366 N.J. Super 485, 491 (citing Kampf v. Franklin Life Ins. Co., 161 A.2d 717 (N.J. 1960)). Accordingly, Chrin is not entitled to recover the value of the portion of his contribution to the patent.

As to his motions to amend, Chrin submitted a proposed amended complaint, alleging that no valid assignment agreements were formed and reiterating claims that he had pursued in the Delaware Court of

Chancery and which the court denied.[2] See Chrin v. Ibrix, Inc., No Civ. A. 20587, 2005 WL 2810599 (Del. Ch. Oct 19, 2005). The District Court reaffirmed, and, we agree, that the assignment agreements were not merely negotiations, but were validly executed contracts. Moreover, the District Court agreed with Ibrix that res judicata precludes Chrin from re-litigating the remaining proposed amended claims. Our review of the record supports that conclusion. Applying Delaware law, see Turner v. Crawford, 449 F.3d 542, 547 (3d Cir. 2006), we agree that all the res judicata elements have been met here. See Second National Building and Loan, Inc. v. Sussex Trust Co., 508 A.2d 902, 906 (Del. Super. Ct. 1985). Because we agree with the District Court that Chrin's proposed amended claims are futile because they are meritless

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2 Chrin alleges in his proposed amended complaint that (1) no contract was ever formed because there was no acceptance; (2) the assignment agreements were merely employment negotiations; (3) the assignment agreement was procured by fraudulent inducement; (4) the assignment agreement breached the covenant of good faith and fair dealing, and (5) Ibrix breached their employment agreement by refusing him promised benefits. As the District Court pointed out, the Delaware Court Chancery rejected claims virtually identical to counts three to five.

and are barred by res judicata, we conclude that the District Court did not abuse its discretion in denying his requests for leave to amend. See Rule 15(a); Shane v. Fauver, 213 F.3d 113, 116 (3d Cir. 2000).

[Filed March 21, 2007]

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAVID CHRIN,	:	Civil No. 06-6226(AET)
Plaintiff,	:	
v.	:	**MEMORANDUM AND**
IBRIX, INC.	:	**ORDER**
Defendant.	:	
	:	

THOMPSON, U.S.D.J.

I. Introduction

This matter comes before the Court on (1) Defendant's motion to dismiss; (2) Plaintiffs motion to remand; and (3) Defendant's letter brief in further support of its motion to dismiss Plaintiff's amended complaint. The Court has decided these motions based upon the submissions of both parties and without oral argument pursuant to Fed. R. Civ. P. 78. For reasons stated below, Defendant's motion to dismiss is granted, Plaintiff's motion for remand is denied, and Defendant's motion to dismiss Plaintiff's Amended

complaint is granted.

II. Background

Plaintiff Mr. Chrin, a pro se, is a co-inventor of a method of electronic file sharing and storage. The pertinent facts, accepting Plaintiff's complaint as true, are as follows: On October 31, 2000. Plaintiff and Defendant signed a Confidential Information and Invention Assignment Agreement ("CIIA"). (Compl. ¶ 8.) Under the CIIA, Plaintiff agreed that in exchange for employment with Defendant, he would: "assign any potential patents to [Defendant]." (Compl. ¶ 9.) Plaintiff began working for Defendant in June, 2001. (Compl. ¶ 7.) On September 11, 2001, Plaintiff and two co-inventors filed a patent application. (Compl. ¶ 11.) On November 9, 2001, Plaintiff executed a second agreement (the "Assignment agreement"), whereby Plaintiff assigned his interest in the putative patent to Defendant, as contemplated by the CIIA. (Compl. ¶ 12.) The Assignment agreement stated Defendant's consideration for Plaintiff's assignment was one dollar and "other good and valuable consideration." (Id.) The "other consideration" was "presumed to be [the] employment" of Plaintiff by Defendant. (Compl. ¶ 13.) Defendant ended Plaintiff's employment on May 3, 2002. (Compl. ¶ 7.) On August 24, 2004, the Patent and Trademark Office granted a patent to Plaintiff

and his co-inventors, which Defendant owned, as per the CIIA and the Assignment agreement.

On October 31, 2006, Plaintiff filed a complaint in state court requesting a declaratory judgment that the CIIA and the Assignment agreement are null and void because: (1) the CIIA was invalid for a lack of a "meeting of the minds" regarding the consideration of the parties; and (2) the Assignment agreement was invalid for lack of consideration. In the alternative, Plaintiff asks for a monetary award under quantum meruit, because "any consideration received is woefully inadequate and insufficient to support the valuable patent" Defendant received. (Compl. at ¶ 22.)

After removing the case to this Court, Defendant moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6). Plaintiff did not oppose this motion. Instead, Plaintiff submitted a motion for remand, wherein he asserts removal was improper because Defendant failed to meet its burden in showing the amount in controversy exceeded $75,000, as required by 28 U.S.C. § 1332(a).[1] See, e.g., Boyer v.

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1 Defendant's opposition to Plaintiff's motion for remand included a sworn affidavit of Steven Orszag, the founder and director of Ibrix, Inc. and co-inventor of the patent at issue. Within the affidavit Mr. Orszag estimates the value of the patent to be between $300,000 - 1,000,000. The

Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990) (stating in a motion to remove, the removing party bears the burden of establishing that federal jurisdiction is proper). During the pendency of these motions, Plaintiff filed an amended complaint, which Defendant subsequently moved to dismiss via a supplemental letter brief.

III. Discussion

A. Defendant's Motion to Dismiss

In short, Defendant argues that Plaintiff's complaint fails to state a claim for which relief can be granted because the facts within the complaint vitiate

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Court finds that Mr. Orszag is qualified to perform a valuation of a patent that is owned by the company he directs. This is a matter within his area of expertise, and the value of the patent is also likely a matter within his personal knowledge. Therefore, Defendant has met its burden of proof. Plaintiff, while disputing Mr. Orszag's method of valuation, offers no alternative value for the patent. Therefore, the Court finds that the amount in controversy requirement has "more likely than not" been met, and Plaintiff's motion for remand is denied. See, e.g., Penn. v. Wal-Mart Stores Inc., 116 F.Supp. 2d 557, 562 (D.N.J. 2000) (stating a "removing defendant [must] prove that it is more likely than not that the amount in controversy exceeds $75,000").

Plaintiffs claims. Specifically, Plaintiff seeks a declaratory judgment that the contracts he entered into with Defendant were void because there was not a "meeting of the minds" over the consideration and that consideration was "not received" (Compl. ¶¶ 15, 17.) Yet, as Defendants point out, Plaintiff admits within the complaint that he received the consideration contemplated by the CIIA. (Compl. at ¶¶ 7, 15, 18.)

1. Plaintiff Alleges the CIIA Lacked a Meeting of the Minds

Plaintiff attached the CIIA and the Assignment agreement to his complaint, which the Court has reviewed in making its ruling. Pension Benefit Guar. Corp. v. White Consol. Indus. Inc., 998 F.2d 1192, 1197 (3d Cir. 1993) (stating in deciding a motion to dismiss a court considers "the allegations contained in the complaint, exhibits attached to the complaint and matters of public record") (citations omitted). The opening sentence of the CIIA states "[i]n consideration of my employment with [Defendant], I agree to the following . . . ." (Compl. Ex. A.) Plaintiff alleges that "[t]here was no existing employment agreement and no agreement for future employment under mutually acceptable terms at the time the [CIIA] was signed." (Compl. ¶ 16.) Because Plaintiff

was not actually employed at the time of signing, Plaintiff alleges "there was no meeting of the minds as to [the] consideration to be receive and no contract was formed." (Id.)

These allegations fail to render the CIIA void as a matter of law. Nothing within the CIIA made Plaintiff's promise conditioned upon his employment commencing at the date of signing, or conditioned upon receiving an employment contract. The CIIA simply states that Plaintiff agrees to assign his rights in future patents "[i]n consideration of [his] employment with [Defendant]." (Compl. Ex. A.) The fact that Plaintiff was not employed at the time he signed the contract is of no legal significance.

This was a bilateral contract where Plaintiff's agreed-to obligation was conditioned on employment with Defendant. 17 Am. Jur. 2d Contracts § 8 ("A contact is bilateral if there are promises on the part of both parties to the contract; a bilateral contract consists of mutual promises to do some future act, and the consideration of the promise of one party is a promise on the part of the other."). Had Defendant never employed plaintiff, then Plaintiff would not have been bound under the contract. However, it is undisputed that Defendant did employ Plaintiff after he signed the CIIA, fulfilling its condition and binding

Plaintiff. (Compl. ¶ 7.) By receiving the benefit contemplated within the CIIA, Plaintiff is estopped from attacking its validity and repudiating the obligations he incurred from it. See, e.g., Borough of Point Pleasant v. J.C. Williams Co., 270 A.2d 275 (1970), 28 Am. Jur. 2d Estoppel and Waiver § 65 ("Parties cannot accept benefits under a contract fairly made and at the same time question its validity").

2. Plaintiff Alleges the Assignment Agreement Lacked Consideration

Plaintiff further alleges that the Assignment agreement lacked consideration. The text of the Assignment agreement states Plaintiffs assignment was in exchange for Defendant's payment of one dollar and "other good and valuable consideration." (Compl. Ex. B.) Plaintiff alleges that the one dollar was never paid and therefore the Assignment agreement "fails for lack of consideration." (Compl. ¶¶ 17, 18.) Defendant correctly rebuts this by noting that Plaintiff while employed by Defendant, was already under an obligation to assign his interest in the patent to Defendant as per the CIIA. Because of that continuing obligation it is of no import whether the Assignment agreement contained valid consideration. Further, Plaintiff has not alleged that the Assignment

agreement somehow modified the CIIA, and thus this claim fails as well.

3. Plaintiff's Claim for Quantum Meruit

Lastly, Plaintiff seeks quantum meruit to compensate him for the "woefully inadequate", consideration he alleges he received from Defendant for assigning his interest in the patent. (Compl. ¶ 22.) This is not a case where the existence of a contact is in doubt, and Plaintiff needs to be compensated for services rendered with the expectation of payment. See, e.g., Weichert Co. Realtors v. Ryan, 128 N.J. 427, 437 (1992) (stating "quantum meruit" is appropriate when services were rendered and "a party confers a benefit with a reasonable expectation of payment"). Clearly, both Plaintiff and Defendant suffered legal detriments and intended to be bound: Plaintiff agreed to assign his patent to Defendant on the condition of employment by Defendant. Even accepting as true plaintiff: allegation that he received "woefully inadequate consideration," this amounts to no more than an assertion that Plaintiff got a bad bargain, and it in axiomatic that a court may not fashion a better bargain for Plaintiff than he negotiated for himself. See, e.g., Lucier v. Williams, 366 N.J. Super. 485, 491 (N.J. Super. Ct. App. Div. 2004) ("Ordinarily, courts will not rewrite contracts to favor a party, for the

purpose of giving that party a better bargain.") Plaintiff's allegations demonstrate both the existence of a contract and that Plaintiff received the benefit of that contract, and thus Plaintiff may not bring an action for quantum meruit. See, e.g., Suburban Transfer Serv. v. Beech Holdings, Inc., 716 F.2d 220, 226-27 (3d Cir. 1983) ("[q]uasi-contract liability [should] not be imposed . . . if an express contract exists conceding the identical subject matter").

B. Plaintiff's Amended Complaint

As Defendant points out, Plaintiff's amended complaint is largely a reiteration of the flawed initial complaint, with one exception. Count V alleges that Defendant failed to there to an employment agreement entered into with Plaintiff. (Am. Compl. ¶ 32, 33.) Plaintiff alleges that Defendant failed to provide Plaintiff necessary training and beached Plaintiff's employment agreement. Further, Plaintiff alleges that breach of the employment agreement constituted breaches of the CIIA and the Assignment agreement hereby empowering Plaintiff to "rescind" his assignment, and reacquire his interest in the patent. (Id.)

These allegations also fail to state a claim as a matter of law. As stated earlier, the terms of the CIIA only require Defendant to employ Plaintiff, there is no

promise by Defendant to abide by an employment agreement. Therefore, the fact that Defendant broke an employment agreement, as Plaintiff alleges, is unavailing, and does not provide a basis for which Plaintiff may seek to void the CIIA.

IV. Conclusion

Although, Plaintiff seeks to void the contract, no allegations within the complaint or amended complaint provide a legal basis for such a remedy. Therefore, for the reasons given above, and for good cause shown,

It is on this 20th day of March 2007,

ORDERED that Defendant's Motion to Dismiss [2] is **GRANTED**; and it is further

ORDERED that Plaintiff's Motion for Remand [5] is **DENIED**; and it is further

ORDERED that Defendant's Motion to Dismiss Plaintiff's Amended Complaint [6] is **GRANTED**; and it is further;

ORDERED that this case is closed.

s/ Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.

[Filed March 21, 2007]

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 07-2931 & & 07-3466

DAVID CHRIN,

Appellant

v.

IBRIX, INC.

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 06-cv-06226)
District Judge: Honorable Anne E. Thompson

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING *EN BANC*

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, and ROTH,* Circuit Judges

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court

and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT:

/s/ Kent A. Jordan
Circuit Judge

Dated: February 4, 2009
SLC/cc: David Chrin
Peter B. Ladig

*Vote limited to Panel Rehearing.

[Filed: February 4, 2009]

U.S.C. 28 §1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

U.S.C. 28 § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 603 (a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this titie—

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether

incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d)

(1) In this subsection—

(A) the term "class" means all of the class members in a class action;

(B) the term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

(C) the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term "class members" means the persons

(named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by

laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)

(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

(A) the primary defendants are States, State officials, or other governmental entities against whom the

district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78P (f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78Bb (f)(5)(E));

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 7B (a) (1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)

(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)

(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711 (2)) in which

monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)

(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules

promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407

(ii) This subparagraph will not apply—

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

U.S.C. 28 § 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the

defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603 (a) of this title may be removed by the foreign state to the district

court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446 (b) of this chapter may be enlarged at any time for cause shown.

(e)

(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

(A) the action could have been brought in a United States district court under section 1369 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a

party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407 (j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become

effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

U.S.C. 28 § 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for

the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after

commencement of the action.

(c)

(1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be

permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon

take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

(f) With respect to any counterclaim removed to a

district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

U.S.C. 35 § 262. Joint owners

In the absence of any agreement to the contrary, each of the joint owners of a patent may make, use, offer to sell, or sell the patented invention within the United States, or import the patented invention into the United States, without the consent of and without accounting to the other owners.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

	:	Civil Action No. 3:06-cv-6226
DAVID CHRIN	:	
	:	Hon. Anne E. Thompson,
Plaintiff	:	U.S.D.J.
	:	Hon. John J. Hughes,
	:	U.S.M.J.
v.	:	Document Electronically
	:	Filed
	:	
IBRIX, INC.	:	**AFFIDAVIT OF STEVEN**
	:	**ORSZAG IN OPPOSITION**
Defendant.	:	**TO PLAINTIFF DAVID**
	:	**CHRIN'S MOTION TO**
	:	**REMAND**

STATE OF CONNECTICUT)
) SS:
COUNTY OF NEW HAVEN)

Steven Orszag, being duly sworn, deposes and says:

1. I am a founder and director of Ibrix, Inc. ("Ibrix") and I submit this affidavit in support of Ibrix, Inc.'s Opposition to Plaintiff David Chrin's Motion to Remand.

2. The patent at issue in the Complaint filed by plaintiff David Chrin, US Patent No. 6,782,389 entitled "Distributing Files Across Multiple, Permissibly Heterogeneous, Storage Devices", was issued on August 24, 2004 and claims priority to US Provisional Application No. 60/232.102 filed on September 12, 2000 (the "'389 patent"). The '389 Patent introduces a new kind of 'segmented' file system that allows files to be efficiently distributed among a number of computers. It forms the core and base idea around which Ibrix™ Inc. was founded and is now selling its solution called Ibrix Fusion™ for so-called cluster computers.

3. The value of the '389 Patent can be established in several ways, including (1) what a neutral third party paid for it and also (2) the market value of comparable technologies in today's marketplace.

4. In July 2001, JT Venture Partners, LLC,

then a third party, invested about $2 million to purchase about 35% of the outstanding equity of Ibrix, which results in a "post-money" valuation of Ibrix at about $5.675MM. At that same time, related investors purchased about 9% of the outstanding equity of Ibrix, leaving about 56% of the company in the hands of the company's founders. That 56% of $5.675MM represents a value of about $3.175MM. Since Ibrix' value in July 2001 was nominally about 1/3 of the intellectual property mentioned above (the '389 Patent) and the remainder was productization of the '389 Patent, this would suggest that the value of the '389 Patent alone was about $1MM.

5. Since 2001 , there have been a handful of companies that have been acquired or have gone public (via initial public offering ("IPO")) and that are roughly in Ibrix's space with competitive technologies. It is reasonable to estimate that upon sale or upon IPO the intellectual property of these companies would constitute at least 5% of the company's value. Thus, one can reasonably conclude that if the sale price or market capitalization post-IPO were larger than $6 million then the intellectual property of these companies is worth in excess of $300K. Companies satisfying that requirement include

a. Spinnaker Networks (acquired by Network Appliance: in November 2003) (*see* exhibit A); [Exhibit omitted in printing]. and

b. Terrascale (acquired by Rackable in August 2006) (*see* Exhibit B). [Exhibit omitted in

printing].

6. Even under a conservative estimate of value, the comparable comply transactions show that the value of the intellectual property covered by the '389 Patent, to which plaintiff erroneously claims partial ownership in this lawsuit, is at least $300K or larger.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 6th day of February at New Haven, CT.

/s/ Steven Orszag
Steven Orszag

SWORN TO AND SUBSCRIBED before me, the undesigned notary public this 6th day of February 2007.

/s/ Judith Smith
Notary Publication
Name: Judith Smith
County of Residence New Haven CT
My commission expires: Sept. 30, 2007

/ Notary Seal Affixed to Original/